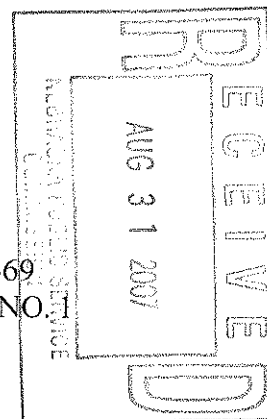


BEFORE THE NEBRASKA PUBLIC SERVICE COMMISSION

In the Matter of the Nebraska Public Service)
Commission, on its own motion, seeking to)
implement policies and procedures related to)
providing dedicated universal service support for)
wireless telecommunications services.)

Application No. NUSF-69
PROGRESSION ORDER NO. 1



**COMMENTS OF THE RURAL INDEPENDENT COMPANIES IN RESPONSE TO
PROGRESSION ORDER NO. 1**

I. Introduction.

The Rural Independent Companies (the “Companies”)¹ hereby submit the following Comments in the above-referenced docket. The Companies appreciate the opportunity to submit comments in this matter responsive to Progression Order No. 1 issued by the Nebraska Public Service Commission (the “Commission”) on July 24, 2007 (the “PO-1 Order”). The PO-1 Order seeks initial comments regarding the establishment of a dedicated universal service support program for wireless telecommunications services. Specifically, the PO-1 Order seeks comment on issues related to whether the dedicated wireless fund should be used to reduce the costs of connecting cellular towers in rural areas to a cost comparable to connection costs in urban areas, and on other issues germane to this proceeding.

II. The Dedicated Wireless Program Was Established as a Program Within the Nebraska Universal Service Fund (“NUSF”), and, as such, Should be Structured to Promote NUSF Principles and Goals.

The Commission has previously determined that a Dedicated Wireless Program should be created. The order entered in NUSF-48/PI-104, which was opened to investigate issues related

¹ Arlington Telephone Company, The Blair Telephone Company, Cambridge Telephone Company, Clarks Telecommunications Co., Consolidated Telco, Inc., Consolidated Telcom, Inc., Consolidated Telephone Company, Curtis Telephone Co., Eastern Nebraska Telephone Company, Great Plains Communications, Inc., Hartington Telecommunications Co., Inc., Hershey Cooperative Telephone Co., K. & M. Telephone Company, Inc., The Nebraska Central Telephone Company, Northeast Nebraska Telephone Company, Rock County Telephone Company, Stanton Telecom Inc., and Three River Telco.

to providing dedicated universal service support for wireless telecommunications services, found that:

1. Dedicated universal service support for wireless telecommunications services should be established.
2. Such support should derive from a dedicated program within the existing Nebraska Universal Service Fund; and
3. A separate docket should be opened to explore and establish the proper interim procedures and method for determining, allocating and distributing support; eligibility standards for support, and any other issues related to the provision of the dedicated wireless support.²

The Commission also noted that it did not contemplate the creation of a separate wireless fund, outside of the current NUSF.³ Due to the fact that the dedicated wireless fund is structured as a dedicated program within the existing NUSF, the Companies believe that the dedicated wireless fund should be structured to promote the universal service principles and goals originally adopted by the Legislature and the Commission, respectively.

Section 86-323 of the NTUSF Act articulates eight principles upon which Nebraska's policy of promoting and advancing universal service is based.⁴ The Companies noted in their Comments in NUSF-48 that, of these eight principles, four of the principles may support the creation of a dedicated universal service support mechanism for mobile wireless telecommunications services.⁵ The Companies believe these principles are also applicable to the structure of the dedicated wireless fund. These principles are as follows:

² See *The Nebraska Public Service Commission, on its own motion, to investigate issues related to providing dedicated universal service support for wireless telecommunications services*, Application No. NUSF-48, PI-104, Order (entered Oct. 18, 2006) at pp. 1-2.

³ *Id.* at p. 1.

⁴ See Neb. Rev. Stat. § 86-323.

⁵ See *The Nebraska Public Service Commission, on its own motion, to investigate issues related to providing dedicated universal service support for wireless telecommunications services*, Application No. NUSF-48, PI-104, Comments of the Rural Independent Companies (filed Sept. 9, 2005) at p. 13.

- (1) Quality telecommunications and information services should be available at just, reasonable, and affordable rates;
- (2) Access to advanced telecommunications and information services should be provided in all regions of the state;
- (3) Consumers in all regions of the state, including low-income consumers and those in high-cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services in urban areas;
- (5) There should be specific, predictable, sufficient and competitively neutral mechanisms to preserve and advance universal service. . . . The distribution of universal service funds should encourage the continued development and maintenance of telecommunications infrastructure.

Further, the Commission also adopted a set of specific goals to guide the design of the high-cost funding mechanism to be consistent with the NTUSF Act.⁶ Of the nine goals the Commission adopted for the long-term NUSF support mechanism in NUSF-26, Progression Order No. 2, the Nebraska Companies identified four goals in their NUSF-48 Comments as being pertinent to a dedicated wireless support mechanism. These goals are as follows:

- c) The Commission should ensure that all Nebraskans should have comparable access to quality telecommunications and information services, including interexchange services, and advanced telecommunications and information services.
- d) All services must be offered at rates that are just, reasonable and affordable and that rural rates should be reasonably comparable to urban rates, all across the services.
- e) The Commission should encourage the development and maintenance of the telecommunications infrastructure and encourage investment and the deployment of new technologies.
- f) Any requirements the Commission adopts should be competitive and technologically neutral.

⁶ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish a long-term universal service funding mechanism*, Application No. NUSF-26, Progression Order No. 2, entered August 27, 2002.

In order to assess how to best fulfill the universal service principles and goals relevant to the dedicated wireless support program, it is instructive to examine the current record regarding wireless service availability and rates.

A review of the last three wireless eligible telecommunications carrier (“ETC”) designation orders reveals the Commission’s long-held concern about coverage issues in rural areas, and the need to expand coverage in underserved and unserved areas. In granting the ETC petition of Viaero Wireless in Application No. C-3324, the Commission concluded “that Viaero’s commitment as demonstrated by its testimony and evidence to add cell sites and expand capacity and quality of service at existing cell sites would provide real benefits to consumers.”⁷ In Application No. C-3497, the Alltel application for ETC designation, the Commission stated “Nevertheless, the Commission wants to ensure that Alltel Wireless is evaluating current data and appreciates the Commission’s concern for investment in the under-served rural areas. . . federal universal service support should be targeted in such a manner as to provide affordable and comparable service to the consumers in the rural areas of the state.”⁸ The Commission required “that Alltel Wireless file its updated five-year plan on or before April 30, 2006, with additional focus on the rural under-served areas as provided herein.”⁹ In Application No. C-3725, the United States Cellular application for ETC designation, the Commission stated in the

⁷ See *In the Matter of the Petition of N.E. Colorado Cellular, Inc., d/b/a Viaero Wireless, Fort Morgan, Colorado, for designation as an Eligible Telecommunications Carrier under 47 U.S.C. § 214(e)(2)*, Application No. C-3324 (entered Oct. 18, 2005) at p. 10.

⁸ See *In the Matter of the Application of Alltel Communications of Nebraska, Inc., for Designation as an Eligible Telecommunications Carrier Pursuant to Section 214(e)(2) of the Communications Act of 1934*, Application No. C-3497 (entered Mar. 7, 2006) at p. 11 (“Alltel ETC Order”).

⁹ *Id.* at p. 21.

order granting ETC status that “[t]his Commission would like to see additional focus on the rural under-served areas.”¹⁰

While the Commission has clearly demonstrated concern that universal service funds should be used by wireless carriers to expand service coverage into unserved or underserved areas, there is no evidence on the record to suggest that once wireless service is available in rural areas, it is not priced in a reasonably comparable manner to service available in urban areas. In fact, a recent study by Criterion Economics indicates that universal service funds do not have a differential effect on prices in rural areas, because wireless prices are set primarily, if not exclusively, in a national market.¹¹ The Criterion Economics study notes that both the Federal Communications Commission and the Cellular Telecommunications and Internet Association (“CTIA”) have indicated that customers have access to the same level of rate plans regardless of where they live.¹²

Given that the Commission has recognized the need for service in rural areas that are still unserved or underserved by any wireless carrier, but has not noted a lack of comparability between rates in urban and rural areas for wireless service, the Companies submit that the dedicated wireless program should be structured to encourage the deployment of wireless service in unserved or underserved rural areas. This would help fulfill statutory principles and NUSF goals related to reasonable comparability of service offerings between urban and rural areas, and would also advance the development of telecommunications infrastructure.

¹⁰ See *In the Matter of the Application of United States Cellular Corporation, Chicago, Illinois, seeking designation as an eligible telecommunications carrier pursuant to section 214(e)(2) of the Communications Act of 1934*, Application No. C-3725 (entered July 3, 2007) at p.16

¹¹ See Kevin W. Caves and Jeffrey A. Eisenbach, “The Effects of Providing Universal Service Subsidies to Wireless Carriers” (Criterion Economics, LLC, June 13, 2007) at pp. 23-24.

¹² *Ibid.*

The fact that the Dedicated Wireless Program was established as a part of the NUSF, but existing separate from the other Nebraska Universal Service Programs, will provide the regulatory flexibility needed for the Commission to target support to currently underserved and unserved areas. Since telephone service is currently available at residential premises that is supported by the high-cost fund, the Companies believe that the Dedicated Wireless Program should place emphasis on providing wireless service as a mobile service along highways in rural parts of the State. The Companies recommend that the establishment of appropriate regulatory oversight and requirements will be necessary for the success of the Dedicated Wireless Program.¹³

The Commission Staff has previously recommended that the Dedicated Wireless Program should be funded to the extent of \$5 million. These dedicated funds should be focused by the Commission to address the issue of providing mobile wireless coverage in unserved and underserved areas along rural highways. The Companies recommend that providing mobile wireless coverage in unserved and underserved areas can best be achieved by focusing these funding resources on tower construction investment to provide service along highways in rural areas.

III. The Dedicated Wireless Program Should Not Be Used to Buy Down the Cost of Connecting Existing Cellular Towers.

The Commission seeks comment on whether it should use the Dedicated Wireless Program to buy down the cost of connecting cellular towers in rural areas to a cost comparable to connection costs in an urban area.¹⁴ The Companies do not believe that funds distributed

¹³ For example, the Commission may consider requiring a wireless carrier to agree to Commission enforcement authority regarding resolution of complaints received by the Commission pertaining to a given wireless carrier's service in order to receive support from the Dedicated Wireless Program.

¹⁴ See *PO-1 Order* at p. 2.

through the Dedicated Wireless Program should be used for this purpose. The primary focus of the Dedicated Wireless Program should be providing mobile wireless service in underserved and unserved areas along rural highways in Nebraska. Mobile wireless service will be expanded in these areas only by the installation of additional towers providing signal coverage. Consequently, expanding coverage in rural areas will most rapidly be achieved, and be experienced by Nebraska consumers, by supporting new tower construction.

Accordingly, the Dedicated Wireless Program should focus the Program's financial resources on building towers. Mobile wireless carriers should only receive funding associated with the construction of new towers. Support should not be provided to fund operations and maintenance associated with existing towers, as this would not ensure that the funds will be used to provide mobile wireless service in underserved and unserved areas along rural highways.

Wireless carriers have currently available additional sources of funding to support transport costs. For example, there is Federal universal service funding that is provided to wireless carriers and this funding may be used for supporting the costs of connecting towers to the wireless carrier's network. In 2006, this funding totaled \$22 million.¹⁵ A review of the current payments for Universal Service Administrative Company shows that Alltel Communications of Nebraska, Inc. received almost \$15,000,000 through June 2007, and should receive more than \$29,000,000 during 2007. Viaero Wireless should receive more than \$1,000,000 during 2007. U.S. Cellular has not yet received any funds during 2007. Even without including U.S. Cellular, wireless carriers should receive approximately \$31,000,000 or

¹⁵ See *In the Matter of the Nebraska Public Service Commission, on its own motion, seeking to establish guidelines for the purpose of certifying the use of state universal service support*, Application No. NUSF-25, 66 (entered Feb. 6, 2007).

approximately 35 percent of the Federal Universal Service Support provided for Nebraska consumers.

In summary, the Dedicated Wireless Program should be used to build towers and expand coverage for Nebraska consumers, and should not be used to provide operational support for existing wireless coverage in areas where wireless carriers have already determined that it is economically feasible to deploy infrastructure to provide service. To the extent that funds for the Dedicated Wireless Program are used to buy down the cost of connecting existing cellular towers in rural areas, it will delay the expansion of mobile wireless service along highways in rural areas that currently have no wireless service.

IV. Conclusion.

The Companies appreciate the opportunity to provide input regarding the proper use of funds for a Dedicated Wireless Program. The Companies submit that the Dedicated Wireless Program should be structured to promote NUSF principles and goals, as it is a dedicated program within the NUSF, and is not a separate fund outside of the NUSF.

In order to best fulfill NUSF principles and goals, the Companies believe the Dedicated Wireless Program should be structured to encourage the deployment of wireless service in unserved or underserved rural areas. Specifically, the fund should place emphasis on providing wireless service as a mobile service along highways in rural parts of the State.

The Dedicated Wireless Program should not be used to buy down the cost of connecting existing cellular towers. The use of funds for this purpose will not directly support the expansion of mobile wireless service along highways in rural areas that currently have no wireless service. Furthermore, wireless carriers in Nebraska receive Federal universal service funds that can be used for this purpose.

Date: August 31, 2007.

Respectfully submitted,

The Rural Independent Companies

Arlington Telephone Company,
The Blair Telephone Company,
Cambridge Telephone Company,
Clarks Telecommunications Co.,
Consolidated Telco, Inc.,
Consolidated Telcom, Inc.,
Consolidated Telephone Company,
Curtis Telephone Company,
Eastern Nebraska Telephone Company,
Great Plains Communications, Inc.,
Hartington Telecommunications Co., Inc.,
Hershey Cooperative Telephone Co.,
K. & M. Telephone Company, Inc.,
The Nebraska Central Telephone Company,
Northeast Nebraska Telephone Company,
Rock County Telephone Company,
Stanton Telecom Inc., and
Three River Telco

By: 

Paul M. Schudel, No. 13723
James A. Overcash, No. 18627
WOODS & AITKEN LLP
301 South 13th Street, Suite 500
Lincoln, Nebraska 68508
(402) 437-8500
(402) 437-8558 Facsimile

